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Attorney for Plaintiffs DOE JEWISH USC FACULTY  
MEMBER 2004 and DOE JEWISH USC STUDENT  
1987, Individually And On Behalf Of All  
Others Similarly Situated

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

DOE JEWISH USC FACULTY MEMBER  
2004, *et al.*,

Plaintiffs,

v.

UNIVERSITY OF SOUTHERN  
CALIFORNIA, *et al.*,

Defendants.

Case No. 2:24-cv-05712-FLA (SSCx)

**PLAINTIFFS' OPPOSITION TO  
DEFENDANT'S MOTION TO DISMISS  
AND STRIKE**

**DATE: October 25, 2024**

**TIME: 1:30 P.M.**

**CTRM: 6B, Hon. Fernando L. Aenlle-Rocha**

**I. PLAINTIFFS REQUEST THAT THE COURT GRANT PLAINTIFFS'  
INTENDED MOTION FOR LEAVE TO FILE SECOND AMENDED  
COMPLAINT DIVESTING THIS COURT OF SUBJECT MATTER  
JURISDICTION UNDER CAFA OR OTHERWISE BEFORE RULING ON  
DEFENDANT'S MOTION TO DISMISS AND STRIKE**

On September 18, 2024, the Court granted Plaintiffs' Ex Parte Application (requesting alternative relief) (the "Application"). See "Order Granting Plaintiffs' Ex Parte Application to File Opposition to Defendant's Motion to Dismiss" (the "Application") (Dkt. 37). Among other things, *the Court and Order invited Plaintiffs to file the motion for leave to file a proposed*

1 *amended complaint, described in the Application, that changes the putative class definitions to*  
2 *exclude any potential Jewish USC Student and Faculty class members who are not “citizens”*  
3 *of the State of California” (“Motion to Amend”) (Order at 2:10-11).*

4 While the Court ordered Plaintiffs to file this Opposition by September 20, 2024, the Court  
5 did not set a deadline with respect to filing Plaintiffs’ Motion to Amend. However, Plaintiffs  
6 intend to file their Motion to Amend on or before September 23, 2024 so the hearing date can and  
7 will be scheduled for the same date and time as the date the Court scheduled to hear Defendant’s  
8 Motion to Dismiss and Strike (October 25, 2024 at 1:30 p.m.) (Dkt. 37, 38).

9  
10 As more particularly set forth in the Application, *the proposed amended complaint will*  
11 *allege that Defendant is a citizen of the State of California and that all named Plaintiffs and*  
12 *putative class members are citizens of the State of California.*

13  
14 Since the proposed amended pleading will divest this Court of subject matter jurisdiction  
15 under CAFA or otherwise by negating even “minimal diversity” between the parties, and there is  
16 no other basis alleged by Plaintiffs in the extant First Amended Complaint or proposed Second  
17 Amended Complaint that establishes federal jurisdiction, *Plaintiffs respectfully request that the*  
18 *Court defer ruling on Defendant’s Motion to Dismiss and Strike until after it decides whether*  
19 *to grant Plaintiffs’ Motion to Amend.* Simply stated, *if the Court grants Plaintiffs’ Motion to*  
20 *Amend*, which is likely (“The court agrees . . . it is the policy of the Court to decide cases on the  
21 merit[s]”) (Order at 1:27-2:2), *the proposed amended pleading will divest this Court of subject*  
22 *matter jurisdiction and require remand back to the Los Angeles County Superior Court.*

23  
24 Judicial economy and efficiency as well as the principles of comity dictate that the Court rule  
25 on Plaintiffs’ Motion to Amend before considering and ruling on Defendant’s Motion to Dismiss  
26 and Strike because a ruling on Defendant’s motions will not be necessary if the Court grants  
27 Plaintiffs’ Motion to Amend. Defendant will not be prejudiced in any respect because it can file a  
28

1 motion to dismiss or demurrer on the same grounds in the State Court action upon remand.

2 Similarly, the Court will not have to consider nor rule on the still pending OSC re remand or  
3 Plaintiffs' still pending remand motion if the Court grants Plaintiffs' Motion to Amend.

4 Accordingly, Plaintiffs respectfully request that the Court defer ruling on Defendant's Motion  
5 to Dismiss or Strike the extant FAC until deciding whether to grant Plaintiffs' Motion to Amend.  
6

7 In lieu of receiving a favorable decision by the Court, Plaintiffs submit the following  
8 Opposition to Defendant's Motion to Dismiss or Strike:

9 **II. THE FIRST AMENDED COMPLAINT ADEQUATELY ALLEGES**

10 **INTENTIONAL ACTS OF DISCRIMINATION, ASSAULT, BATTERY AND**

11 **BREACH OF CONTRACT AGAINST THE UNIVERSITY**

12 The first 13 pages of Defendant's motion to dismiss ("MTD") erroneously assert that  
13 Plaintiffs' allegations do not rise to the level of "intent" required under California law to state a  
14 cause of action. ("Consistent with their text and legislative purpose, all three statutes [Bane Act,  
15 Unruh Act and Ralph Act] capture only *intentional* deprivations of civil rights or *intentional*  
16 discrimination"); ("Plaintiffs must plead and prove that USC's 'act of interference' with a civil  
17 right was itself 'deliberate or spiteful'"); ("[A]s with the civil rights claims, California law requires  
18 a defendant to specifically intend to facilitate an assault or battery by 'outside agitators' based on  
19 an aiding and abetting theory" (all citations omitted) (Defendant's MTD at pages 7-13).  
20

21 The gravamen of Plaintiffs' Complaint in this "local controversy" action (originally filed  
22 in the Los Angeles County Superior Court by California citizens and members of the USC Family  
23 against California's UNIVERSITY OF SOUTHERN CALIFORNIA ("Defendant" or "USC")) is  
24 that USC *intentionally and purposely* aided, abetted, encouraged, facilitated and enabled a mob  
25 of pro-Hamas terrorist students and outside agitators to take over and operate its campus for  
26 weeks on end in late April and May 2024 to intimidate, assault, terrorize, and control access to  
27  
28

1 the Campus and deny free passage for Jewish Students and Jewish Faculty Members. (Plaintiffs'  
2 First Amended Complaint ("FAC") at 2:2-10:10).

3 Plaintiffs allege, among other things, that they were denied passage to their places of  
4 study and work unless they disavowed "Zionism" and otherwise complied with demands from  
5 what has now fashionably become USC's "most favored" protestors and protests. *Id.*

6  
7 The Jewish Faculty Member class representative alleges that he or she was specifically  
8 spat on by the terrorist mob, and the FAC generally alleges that "Jewish Students and Jewish  
9 Professors and Faculty were spat on by the Campus Terrorists if they dared to cross into the  
10 Encampment." (FAC at 2:25-27). These facts, in conjunction with the specific facts alleging the  
11 various means by which USC aided and abetted the Campus Terrorists, including USC's long-  
12 standing policies and procedures, establish the elements needed to constitute a classic case of  
13 common law assault and "battery."  
14

15 The FAC alleges that Defendant not only knew or should have known about the terrorist  
16 mob (negligence), but also encouraged and enabled the event and the terrorists with virtually no  
17 pushback whatsoever (until donors threatened to pull their donations). (FAC at 2:2-12:31).  
18 Indeed, Plaintiffs allege that in some respects USC sponsored the terrorists. In response to  
19 Plaintiffs' complaints, USC did nothing other than instruct Plaintiffs to work and study at home  
20 remotely rather than come to the Campus if they could not handle the heat. *Id.*  
21

22 The Court must accept as true the allegations in Plaintiffs' FAC if they show a plausible  
23 claim for relief. *Bell Atlantic Corp. v. Twombly*, 550 US 544, 556 (2007); *Starr v. Bacca*, 652 F.  
24 3d 1202, 1216 (9th Cir. 2011). When a complaint's allegations are capable of more than one  
25 inference, the court must adopt whichever plausible inference supports a valid claim. *Starr, supra*  
26 at 1216.

27 In this case, the allegations set forth in the FAC all give rise to valid claims against USC  
28

1 under the California BANE Act, Ralph Act, and Unruh Act. (See Judicial Council of California,  
2 “Civil Jury Instructions” (“CACI”)) (CACI 3066) (“Bane Act-Essential Factual Elements (Civ.  
3 Code 52.1”); (CACI 3067) (“Unruh Civil Rights Act-Damages (Civ. Code 51, 52”); (CACI 3068)  
4 (“Ralph Act-Damages and Penalty (Civ. Code 51.7, 52(b).” The incorporated facts directly and  
5 indirectly assert intentional conduct and deprivation of Plaintiffs’ civil rights under these state law  
6 statutes.

7  
8 The allegations in the FAC also assert valid common law claims sounding in breach of  
9 contract,” “negligence,” “assault” and “battery.” (See CACI 303) (“Breach of Contract-Essential  
10 Factual Elements”), (CACI 400) (“Negligence-Essential Factual Elements”), (CACI 1300)  
11 (Battery-Essential Factual Elements) and (CACI 1301 (“Assault-Essential Factual Elements”).

12  
13 Plaintiffs have alleged and incorporated by reference the specific facts set forth in  
14 paragraphs 1-31 of the FAC into the referenced causes of action and in particular, the factual  
15 elements of proof needed to establish each claim. This is confirmed by the applicable jury  
16 instructions referenced herein. The facts alleged and reasonable inferences to be drawn from such  
17 allegations establish the requisite intent needed to state a claim.

18  
19 Thus, Plaintiffs and those similarly situated have alleged claims sufficient to entitle them  
20 to recover nominal damages and more importantly injunctive relief for the damages and harm  
21 caused by Defendant’s conduct, action and inaction with respect to each of the statutes that  
22 Plaintiffs allege Defendant has violated.

23  
24 Moreover, Plaintiffs’ class representatives are adequate to serve the putative class and  
there is no reason at this early pleading stage to strike the class allegations.

25  
26 Accordingly, the Court should deny Defendant’s motions to dismiss and strike in their  
entirety.

1  
2 **III. THE COURT SHOULD GRANT PLAINTIFFS LEAVE TO ALLEGE THE**  
3 **REQUISITE INTENT IF IT CONCLUDES IT IS MISSING**

4 Contrary to the assertions of Defendant, Plaintiffs have clearly alleged direct facts and  
5 indirect facts and circumstances under which this Court can reasonably infer intentional  
6 deprivations of civil rights or intentional discrimination by USC and its Trustees.  
7

8 For example, Plaintiffs allege that some of the outside agitators and guest professors  
9 causing the harm complained of by Plaintiffs were invited by USC to speak or teach at the USC  
10 campus with USC'S knowledge that just inviting them to speak or teach would foment the very  
11 kind of protests that gave rise to the encampments and discrimination at issue. Id.

12 Plaintiffs respectfully submit that USC's encouragement and appeasement of pro-Hamas  
13 and Jew-hating encampments of terrorists, and knowingly allowing encampments comprised of  
14 Jew-hating students and outside agitators to exist and flourish for weeks on end during the school  
15 year in the middle of USC's "town square"- is in and of itself an intentional act of defiance  
16 against all Jewish citizens and in particular, Jewish students and faculty members.  
17

18 Thus, Plaintiffs have alleged facts and circumstances that show and demonstrate that  
19 Defendant and its trustees favor mob rule at the expense of Jewish Faculty Members and  
20 Students. This conduct constitutes "intentional" discrimination. USC's "tolerance" of mob rule  
21 is an intentional deprivation the civil rights of any Jewish Student or Jewish Faculty Member who  
22 does not feel he or she needs to tolerate it. Jews who pay to study and gain a degree from USC  
23 and faculty members who happen to be Jewish should not be forced to remain in their offices or  
24 dorm rooms because they do not want, need or require daily reminders from terrorist mobs  
25 wearing traditional Khalifah and other masks to cover their true identities that Defendant's  
26 trustees are condoning and encouraging encampments created by Hamas supporting terrorist  
27 mobs who want to wipe Israel and all Jews off the face of the Earth.  
28



1 To the extent that this Court agrees with Defendant and views that Plaintiffs' statutory  
2 discrimination and assault and battery claims do not plead the requisite intent, Plaintiffs should be  
3 allowed leave to amend to allege the intent that the Court finds wanting. See *Lillard v. Shelby*  
4 *County Board of Ed.*, 76 F. 3d 716, 724 (6<sup>th</sup> Cir. 1996) (motions to dismiss civil rights complaints  
5 should be "scrutinized with special care").  
6

7  
8 DATED: September 20, 2024

LAW OFFICES OF MICHAEL E. REZNICK  
A Professional Corporation

9  
10 By: /s/Bryan Christopher Castaneda  
11 Bryan Christopher Castaneda

12 Attorney for Plaintiffs DOE JEWISH USC  
13 FACULTY MEMBER 2004 and DOE JEWISH  
14 USC STUDENT 1987, Individually And On Behalf  
15 Of All Others Similarly Situated  
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**CERTIFICATE OF SERVICE**

I hereby certify that on September 20, 2024, I served the following documents by and through the CM/ECF system all parties of record to this action and interested parties who are registered CM/ECF users, or have registered for electronic notice, or have consented in writing to electronic service, and that service will be accomplished through the CM/ECF system:

**PLAINTIFFS' OPPOSITION TO DEFENDANT'S MOTION TO DISMISS AND STRIKE**

I declare under penalty of perjury under the laws of the State of California and United States of America that the foregoing is true and correct.

Executed on September 20, 2024 at Oak Park, California.

By: /s/Bryan Christopher Castaneda  
Bryan Christopher Castaneda